Dalling Construction, Inc. *and* Connecticut Laborers' Funds, a/w Laborers' International Union of North America, AFL–CIO. Case 34–CA–5442

March 17, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge filed by Connecticut Laborers' Funds, a/w Laborers' International Union of North America, AFL–CIO, on November 25, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Dalling Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On February 10, 1992, the General Counsel filed a Motion for Summary Judgment. On February 14, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional Attorney, by letter dated January 7, 1992,[1] notified the Respondent that unless an answer was received by close of business January 15, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Connecticut corporation, at its facility in Bridgeport, Connecticut, has been engaged as a general contractor providing road and highway construction, and as a contractor providing building construction work. During the 12-month period ending October 31, 1991, the Respondent, in the course and conduct of its business operations, provided services valued in excess of $50,000 to the cities of Bridgeport and New Haven, Connecticut, each of which is directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL–CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Recognition*

On or about June 17, 1980, the Respondent granted recognition to the Union as the exclusive collective-bargaining representative of the Respondent's employees in a unit appropriate for collective bargaining, without regard to whether the majority status of the Union had ever been established under Section 9(a) of the Act. The unit is as follows:

> All laborers employed by the Respondent at its Bridgeport, Connecticut facility, but excluding all other employees, and guards, professional employees and supervisors as defined in the Act.

On that same date the Respondent entered into an "Acceptance of Agreements" with the Union whereby it accepted and approved the April 1, 1977, to March 31, 1981 collective-bargaining agreement between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. and the April 1, 1977, to March 31, 1981 collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc., and agreed to be bound to such future agreements unless timely notice was given. Successor collective-bargaining agreements have continued to date, the most recent of which are effective by their terms for the period April 1, 1991, through March 31, 1993.

For the period June 17, 1980, to March 31, 1993, based on the principles established in *John Deklewa*

[1] Inadvertently referred to as January 7, 1991.

& Sons, 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988), the Union has been and is the limited exclusive collective-bargaining representative of the unit.

B. *Refusal to Bargain*

Since on or about June 1, 1991, Respondent, unilaterally and without the consent of the Union, has failed to continue in full force and effect all the terms and conditions of the agreements described above by failing to make the contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Trust Fund, and the Connecticut Laborers' Annuity Fund.

The terms and conditions of the agreements which Respondent unilaterally and without the consent of the Union failed to continue in full force and effect are terms and conditions of employment of employees of the unit, and are mandatory subjects of bargaining. The Respondent engaged in the acts and conduct described above without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the limited exclusive representative of the Respondent's employees with respect to such acts and conduct.

CONCLUSIONS OF LAW

By its failure on and after June 1, 1991, to continue in full force and effect all the terms and conditions of the collective-bargaining agreements, by making contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Trust Fund, and the Connecticut Laborers' Annuity Fund, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to make all contractually required payments it failed to make since June 1, 1991.[2] The Respondent shall also make its employees whole for any losses attributable to its failure to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Dalling Construction, Inc., Bridgeport, Connecticut, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain collectively with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL–CIO as the limited exclusive representative of its employees in the bargaining unit, by failing to make contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Fund, and the Connecticut Laborers' Annuity Fund.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Continue in full force and effect all the terms and conditions of the collective-bargaining agreements with the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All laborers employed by the Respondent at its Bridgeport, Connecticut facility, but excluding all other employees, and guards, professional employees and supervisors as defined in the Act.

(b) Make all contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Fund, and the Connecticut Laborers' Annuity Fund as provided in the remedy section of this decision.

(c) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Fund, and the Connecticut Laborers' Annuity Fund.

[2] Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make whole" remedy. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).

(d) Preserve and on request make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(f) Post at its facility in Bridgeport, Connecticut, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Connecticut Laborers' District Council of the Laborers' International Union of North America, AFL–CIO, as the limited exclusive representative of the employees in the bargaining unit.

WE WILL NOT fail or refuse to continue in full force and effect all the terms of our agreements by failing to make contractually required payments to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Fund, and the Connecticut Laborers' Annuity Fund.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL continue in full force and effect all the terms and conditions of our collective-bargaining agreements with the Union.

WE WILL make all contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Fund, and the Connecticut Laborers' Annuity Fund.

WE WILL make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make contractually required contributions to the Connecticut Laborers' Health Fund, the Connecticut Laborers' Pension Fund, the New England Laborers' Training Fund, and the Connecticut Laborers' Annuity Fund.

DALLING CONSTRUCTION, INC.